

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Service and)	CG Dkt. No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	
)	

EX PARTE SUBMISSION OF COMMUNICATION SERVICE FOR THE
DEAF

I. Background

On May 9, 2006, the FCC released an order prohibiting video relay service (VRS) providers from restricting consumers to individual VRS providers.¹ The FCC found the failure to provide VRS interoperability to be “inconsistent with the functional equivalency mandate, the public interest, and the TRS regime as intended by Congress,” and noted that the practice of blocking VRS users “raises serious public safety concerns.”² This interoperability ruling, published in the Federal Register on May 31, 2006, and now in effect, requires that all VRS consumers be able to place a VRS call through the services of any VRS provider, and that all VRS providers be capable of receiving calls from, and making calls to, any VRS consumer.³

¹ *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, FCC 06-57 (May 9, 2006) (Interoperability Order).

² *Id.* at ¶¶29; 76.

³ 71 Fed. Reg. 30818 (May 31, 2006)

Providers in violation of this ruling are not eligible to receive compensation for VRS through the Interstate TRS Fund.

The FCC's interoperability order was in response to the practices of some providers that prohibited recipients of their free equipment or Internet services from accessing the VRS of competing providers. Although technically, all VRS consumers are able to now access the services of any provider, one VRS provider, Sorenson, has begun using a disclaimer that pops up each time an individual attempts to access a competitor via one of Sorenson's videophones. CSD believes that this disclaimer is in violation of the letter and spirit of the FCC's interoperability ruling and the Americans with Disabilities Act's mandate for functionally equivalent telephone service, and urges the FCC to direct Sorenson to discontinue its use immediately.

II. Sorenson's Pop-up Disclaimer Delays Access and Removes Consumer Choice

Sorenson's intercept message appears in this fashion: Each time a consumer uses a Sorenson-distributed video device to try to exit to another provider, he or she is informed:

You are dialing a Video Relay Service (VRS) that does not use or support Sorenson Services. Sorenson cannot ensure the quality of the interpreting services or the video clarity that is offered by other VRS providers. Do you wish to continue to place this call?

This message is followed by a box that gives users the following option:

☐ **In the future, do not show this message**

This instruction is then followed by an additional option to click “YES,” “NO,” or to view an ASL help video. The “**NO**” selection is highlighted by a yellow enclosure.

Within the past few weeks, deaf consumers have reported that they are both intimidated and confused by Sorenson’s pop-up message. For example, one individual who worked at CSD’s booth located at the National Association of the Deaf’s (NAD’s) conference in Palm Springs, California from June 29 through July 3, 2006 reported, “when I was at the NAD conference, I was approached by at least five individuals expressing confusion with Sorenson’s disclaimer. In addition, several seniors from Frederick, MD, and staffers from Gallaudet asked me for clarification of the disclaimer.”⁴ Another individual explained, “it is intimidating, and it implies that the consumer making the decision to switch is not doing the right thing. Most important of all, it doesn’t show total respect and sensitivity to the consumer making final decision on the provider he or she wants to use. . . . This is also an indirect form of blocking. . . .” Yet another wrote, “this type of marketing practice is adversely affecting consumers consent rather than allowing them to have a choice. It is a perceived blocking, psychologically speaking - as an intimidation tactic.” These and other reports like these demonstrate that Sorenson’s pop-up disclaimer is turning people away from using other providers with the suggestion that if they move the yellow selector to the YES

⁴ E-mail from Al Sonnenstrahl to Karen Peltz Strauss (July 28, 2006).

box, the quality of their video will decrease. Consumers appear most distressed by the fact that they have to confirm that they want to use another provider, and that the box that is highlighted is “NO.”

On July 17, 2006, in response to a recent FCC notice of proposed rulemaking on VRS protocols, Verizon also expressed concern with the notice. Specifically, after noting its opposition to “artificial constraints on interoperability” and its support of consumer choice, Verizon said Sorenson’s practice was “misleading and runs contrary to the letter and spirit of the *Declaratory Ruling*.”⁵ One week later, on July 24, 2006, Hands On VRS similarly requested the FCC to declare the Sorenson notice in violation of its interoperability ruling.⁶ Hands On complained that the notice degrades VRS on calls made through other providers and therefore “violates the intent and the letter of the Declaratory Ruling.”⁷ Hands On further alleged that the act of placing any intercept in the way of the VRS user constitutes call blocking because this reveals that Sorenson, not the consumer, is controlling the routing of the call.

⁵ Verizon Comments in CG Dkt. No. 03-123 (May 17, 2006) at 6 n. 5. It is also quite disturbing, as Verizon points out, that Sorenson is able to and does track each customer’s usage of competing providers. For some time now, Sorenson has tracked the VRS usage of its customers and the customers of other VRS providers through its control over VP-100s and D-link units. Aside from violating the interoperability order, this practice raises considerable privacy issues.

⁶ Hands On Video Relay Services, Inc., Request for Clarification of Declaratory Ruling, CG Dkt. No. 03-123 (July 24, 2006) (HOVRS Request for Clarification)

⁷ *Id.* at 3 (July 24, 2006).

CSD agrees with the many concerns about the Sorenson pop-up notice that have already been raised. First, the notice is very confusing, in that it asks two questions in a row before providing the “yes” or “no” options. Consumers who choose “no” may be mistaken in believing that they are making a request not to see the intercept message in the future, when in fact, choosing this option will terminate their connection to another provider. As one consumer explained, “I had to read and re-read it 3 or 4 times before figuring out that I needed to click the “do not show this message” first before going on to click “yes.” I wondered if I clicked “yes” before clicking the “do not show message” if the message would reappear. . . It’s easier to follow the suggested highlighted “NO” and go on with it because I trust the suggested highlighted button as the best one.”⁸

Second, Sorenson’s intercept notice is in violation of the FCC’s rules because it delays the relay connection that a consumer may be attempting to place. The FCC has already said, on more than one occasion, that just as voice telephone users can instantaneously reach a dial tone when they pick up the telephone, so too should reaching a communications assistant be like reaching a dial tone. Indeed, the FCC has explained that “ability of a TRS user to reach a CA prepared to place his or her call, without experiencing

⁸ E-mail from Lawrence Brick to Karen Peltz Strauss (July 19, 2006). Mr. Brick later registered his concerns in a letter to the FCC, where he added “I consider such harassment with such a message while making a phone call a violation of my functional equivalency rights to make phone calls without interruptions.” Comment of Lawrence Brick in CG Dkt. 03-123 (July 31, 2006).

delays that a voice telephone user would not experience in placing a telephone call, is fundamental to the concept of ‘functional equivalence.’”⁹ When a VRS user is forced to navigate through the choices given in Sorenson’s intercept message, that consumer’s experience in making the call no longer mirrors the experience of a conventional voice telephone user, who can pick up a phone and simply place a call. By no stretch of the imagination can one conclude that the experience of a VRS user who is initially blocked by Sorenson’s message is functionally equivalent to that of a voice telephone user.

Finally, and equally importantly, Sorenson’s notice inappropriately gives consumers the impression that if they choose another company, they will be sorry for doing so. Indeed, just as consumers were fearful of using other providers prior to the interoperability ruling – lest their VP-100s be taken from them – now again, consumers are expressing fear that the quality of their VRS experience will suffer if they shift to a different provider. While this may not be the same type of physical block that was imposed prior to the recent order, it is achieving the same result.

Consumers are capable of determining for themselves whether they prefer one provider over another. Indeed, one can only imagine the public’s outrage were mainstream phone companies to present a similar type of

⁹ Interoperability Order at 6, citing *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Dkt No. 90-571, Notice of Proposed Rulemaking, 13 FCC Rcd 14187, 14289, at ¶49 (May 20, 1998).

disclaimer to hearing individuals wishing to dial around their pre-subscribed voice telephone carrier. As aptly stated by Hands On VRS,

Imagine if AT&T distributed a telephone to the public which intercepted calls destined for other long distance providers, stated that AT&T could not vouch for the quality of the telephone transmission, and asked if the caller still desired to make the call. The Commission would not stand for this.¹⁰

Of course, conventional voice telephone users receive no such messages; they can freely choose their carriers, and then determine on their own whether they are satisfied with the service of those carriers. If not, it is up to the consumers themselves not to continue giving those carriers their business. The same should and must hold true under the FCC's interoperability ruling; otherwise the ruling will not achieve its desired result of granting VRS consumers the full ability to choose their own relay providers.

On July 27, 2006, Sorenson filed an *ex parte* letter with the FCC alleging that other VRS providers have not made the video device purchases that are necessary to match the quality of Sorenson's video devices, and that in fact, its intercept message is needed because other VRS providers are degrading VRS quality. It goes on to assert that the company "not only has a right, but also an obligation, to tell its customers that they are leaving the Sorenson network and that Sorenson cannot guarantee the quality of service they will receive from other providers." This highly inflammatory statement

¹⁰ HOVRS Request for Clarification at 7.

hardly dignifies a response. The quality of VRS offered by CSD and other providers is equal to or better than that offered by Sorenson, and CSD resents any suggestions to the contrary.¹¹

III. Conclusion

CSD believes that Sorenson's use of a pop-up disclaimer notice constitutes noncompliance with the letter and spirit of the interoperability ruling because it is inappropriately scaring consumers, deterring them from exercising their right to access any VRS provider, and delaying their connection to a communications assistant. We urge the FCC to direct Sorenson to cease and desist from employing this intercept message at once.

Respectfully submitted,

/s/

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¹¹ Interestingly, in the same breath that Sorenson complains that other providers are reluctant to invest in high quality video equipment, Sorenson still refuses to make its VP 100s or 200s, which it alleges achieves such high quality, commercially available to other providers.

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August 3, 2006